THE PEOPLES Antient and Just LIBERTIES ASSERTED IN THE TRYAL OF *William Penn*, and *William Mead*,

At the Sessions held at the *Old-Baily* in *London*, the first, third, fourth and fifth of *Sept.* 70. against the most Arbitrary procedure of that Court.

Isa. 10. 1, 2. *Wo unto them that Decree Unrighteous Decrees, and write grievousness, which they have prescribed, to turn aside the Needy from judgment, and to take away the right from the Poor.*

Psal. 94. 20. *Shall the Throne of Iniquity have fellowship with thee, which frameth mischief by a Law.*

Sic volo, sic jubeo, stat pro ratione voluntas.

Old-Baily, 1st. 3d. 4th, 5th of *Sept.* 1670.

London, Printed for *William Butler*, 1682.

THE

PEOPLE'S

LIBERTIES

ASSERTED

IN THE

TRYAL

OF

William Penn, and William Mead,

To the Engliſh Reader.

IF ever it were time to ſpeak, or write, 'tis now, ſo many ſtrange Occurrences, requiring both.

How much thou art concerned in this enſuing Trial (*where not only the Priſoners, but the Fundamental Laws of* England) *have been moſt Arbitrarily Ardigned: Read, and thou mayſt plainly judge.*

Liberty of Conſcience, *is counted a pretence for Rebellion, and* Religious Aſſemblies, Routs, *and* Riots; *and the* Defenders *of both, are by them reputed* Factious *and* Diſ-affected.

Magna Charta, *is Magna Far——with the* Recorder *of* London; *and to demand* right *an affront to the Court.*

Will *and* Power *are their great* Charter, *but to all for* Englands, *is a Crime: incurring the penalty of their* Bale-dock, *and* Naſty hole, nay, *the mention of a* Gag, *and* Iron Shackles *too.*

The Jury (*though proper Judges*) *of Law and Fact*) *they would have over-ruled in both, as if their Verdict ſignified no more, than to echo back the illegal charge of the Bench; and becauſe their courage and honeſty did more than hold face, with the threat and abuſe of thoſe, who ſate as Judges,* (*after two dayes and two nights reſtraint for a Verdict*) *in the end were fined and impriſoned for giving it.*

O! what monſtrous and illegal proceedings are theſe? Who reaſonably can call his Coat his own? When Property is made ſubſervient to the Will and Intereſt of his Judges; or, *Who can truly eſteem himſelf a Free-man?* When all Pleas for Liberty are eſteemed Sedition, *and the Laws, that give, and maintain them, ſo many ſignificant pieces of formality.*

And what do they leſs than plainly tell us ſo who at Will and Pleaſure break open our Locks, rob our Houſes, raze our Foundations, impriſon our Perſons, and finally, deny us Juſtice to our relief; *as if they then acted moſt like Chriſtian men, when they were moſt barbarous, in ruining ſuch as are really ſo; and that no Sacrifice could be acceptable to God, as the deſtruction of thoſe, that moſt fear him.*

In ſhort, That the Conſcientious ſhould only be obnoxious, and the juſt

de mand of our Religious Liberty, the reason why we should be denied our civil Freedom (as if to be a Christian and an English-man were inconsistent) and that so much solicitude and deep contrivance, should be imployed only to ensnare and ruin so many ten thousand conscientious Families) so eminently, industrious, serviceable and exemplary; *whilst Murders can so easily obtain pardons, Rapes be remitted, publick Uncleanness pass unpunished, and all manner of* Levity, Prodigality, Excess, Prophaneness *and* Atheism, *universally connived at, if not in some respect manifestly encouraged*) *cannot but be detestable, abhorrent to every serious and honest mind.*

Yet that this lamentable state is true, and the present Project *in hand let* London's Recorder, *and* Canterburies Chaplain *be heard.*

The first in his publick Panegerick, upon the Spanish Inquisition, highly admiring the prudence of the Romish Church, in the erection of it as an excellent way, to prevent Schism, *which unhappy expression, at once passeth sentence, both against our fundamental Laws, and Protestant Reformation.*

The second in his printed Mercinary Discourse against Toleration, *asserting for a main Principle,* That it would be less injurious, to the Government, to dispence with Prophane and Loose Persons, than to allow a toleration to religious Dissenters: *It were to over-do the business, to say any more, where there is so much said already.*

And therefore to conclude, We cannot chuse but admonish all, as well Persecutors, *to relinquish their Heady, Partial, and Inhumane Prosecutions (as what will certainly issue in disgrace here, and inevitable condign punishment hereafter) as those who yet dare express their moderation (however out of fashion, or made the Brand of Fanatisism) not to be huff'd, or menaced out of that excellent temper, to make their parts and persons subservient to the base humors, and sinister designs of the biggest mortal upon Earth; but to revenge and obey the Eternal just God,* before whose great Tribunal all must render their accounts, and where he will recompence to every Person according to his works.

The

The Tryal of William Penn and William Mead.

AS there can be no Observation, where there is no Action; so its impossible, there shall be a judicious intelligence, without due Observation.

And since there can be nothing more reasonable than a right information, especially of *Publick Acts*; and well knowing, how industrious some will be, to mis-represent this Trial to the disadvantage of the Cause and Prisoners, it was thought requisite, in defence of both, and for the satisfaction of the People, to make it more publick; nor can there be any business wherein the People of *England* are more concerned, than in that which relates to their civil and Religious Liberties, questioned in the Persons above named, at the *Old Baily*, the first, third, fourth and fifth of *Sept.* 1670.

There being present on the Bench, as Justices:

Sam. Starling, Mayor, } *John Robinson*, Alderm.
John Howel, Recorder. } *Joseph Shelden*, Alderm.
Tho. Bludworth, Alder. } *Richard Brown.*
William Peak, Alderm. } *John Smith*, } Sheriffs.
Richard Ford, Alderm. } *James Edwards*, }

The Citizens of *London* that were summoned for Jurors, appearing, were impannelled, *viz.*

Cla. Call over the Jury.

Cry. Oyes, *Thomas Veer*, *Ed. Bushel*, *John Hammond*, *Charles Milson*, *Gregory Walklet*, *John Brightman*, *Wil. Plumsted*, *Hen. Henly*, *James Damask*, *Henry Michel*, *Wil. Lever*, *John Baily*.

The Form of the Oath.

You shall well and truly try, and true Deliverance make betwixt our Soveraign Lord the King, and the Prisoners at the Bar, according to your Evidence; So help you God.

The

The Indictment.

That *William Penn*, Gent. and *William Mead* late of *London* Linnen-Draper, with divers other Persons, to the Jurors unknown, to the number of three hundred, the 15th day of *August*, in the 22th year of the King, about eleven of the clock in the forenoon the same day, with Force and Arms, &c. in the Parish of St. *Bent Grace-Church*, in *Bridge-ward Without*, in the street called *Grace-Church-Street*, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the Peace of the said Lord the King: and the aforesaid *William Penn* and *William Mead* together with other Persons to the Jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid *William Penn*, by agreement between him and *William Mead*, before made, and by abetment of the aforesaid *William Mead*, then and there, in the open street, did take upon himself to preach and speak, and then, and there, did preach and speak, unto the aforesaid *William Mead*, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of People in the Street aforesaid, then and there, along time did remain and continue, in contempt of the said Lord the King, and of his Laws, to the great disturbance of his Peace, to the great terror and disturbance of many of his Liege people and Subjects, to the ill example of all others in the like case Offenders, and against the Peace of the said Lord the King, his Crown and Dignity.

What say you, *William Penn*, and *William Mead*, are you guilty, as you stand indicted, in manner and form as aforesaid, or not guilty.

Penn. It is impossible, that we should be able to remember the Indictment verbatim, and therefore we desire a Copy of it as is customary in the like occasions.

Rec. You must first plead to the Indictment, before you can have a Copy of it.

Penn. I am unacquainted with the formality of the Law, and therefore, before I shall answer directly, I request two things of the Court. First, that no advantage may be taken against me, nor I deprived of any benefit, which I might otherwise have received. Secondly, that you will promise me a fair hearing, and liberty of making my defence.

Court. No advantage shall be taken against you, you shall have liberty, you shall be heard.

Penn

Pen. Then I plead not guilty to manner and forms.

Clerk. What say'st thou, *William Mead*, Art thou guilty in manner and form, as thou stand'st indicted, or not guilty.

Mead. I shall desire the same liberty as is promised to *William Penn.*

Court. You shall have it.

Mead. Then I plead not guilty in manner and form.

The Court adjourned until the afternoon.

Clerk. O yes, &c.

Cla. Bring *William Penn* and *William Mead* to the Bar.

Obser. The first Prisoners were brought, but were set aside, and other business proceeded. What we cannot choose but observe, that it was the constant and unjust practice of the Court to the Prisoners, to make them wait upon the Sessions of Felons and Murderers, thereby delighting in all Opportunities to trample on and vex them.

After five hours attendance the Court broke up, and adjourned to the third instant.

The third of *September*, 1670. the Court sate.

Cry. O yes, &c.

Cla. Bring *William Penn* and *William Mead*, to the Bar.

Mayor, Sirrah, Who bid you put off their Hats? put on their Hats again.

Obser. Whereupon one of the Officers putting the Prisoners Hats upon their heads, (pursuant to the Order of the Court) brought them to the Bar.

Record. Do you know where you are?

Pen. Yes.

Rec. Do you not know it is the Kings Court?

Pen. I know it to be a Court, and, I suppose to be the Kings Court.

Rec. Do you know there is respect due to the Court?

Pen. Yes.

Rec. Why do you not pay it then?

Pen. I do so.

Rec. Why do you not put off your Hat?

Pen. Because I do pay it here.

Rec. Well, the Court fee'd every Man a Fine for your contempts of the Court.

Pen.

Penn, I desire it might be observed, that we came into the Court with out our Hats off, (that is, taken off) and if they have been put on since, it was by order from the Bench, and therefore not we but the Bench should be fined.

Mead, I have a Question to ask the Recorder, Am I fined also?

Rec. Yes.

Mead. I desire the Jury, and all people to take notice of this injustice of the Recorder, who spake not to me to pull off my Hat, and yet hath he put a Fine upon my Head. O fear the Lord, and dread his Power, and yield to the guidance of his holy Spirit; for he is not far from every one of you.

The Jury sworn again.

Observ. Judge [illegible] Indictment of the Jury, ingeniously objected against [illegible] that we had not kit the Book, and therefore would have him sworn again; though indeed, it was on purpose, to have made use of his tenderness of Conscience in avoiding reiterated Oaths, to have put him by his being a Jury-man, apprehending him to be a person, not fit to answer their arbitrary ends.

The Clark read the Indictment, as afore said.

Cla. Cryer, Call *James Cook*, into the Court, give him his Oath.

Cl. James Cook, lay your hand upon the Book. "The Evidence "you shall give to the Court, betwixt our Sovereign Lord the King, and "the Prisoners at the Bar, shall be the Truth, and the whole Truth, "and nothing but the Truth, so help you God, &c.

Cook, I was sent for, from the Exchange, to go and disperse a Meeting in Gracious-street, where I saw Mr. Penn speaking to the People, but I could not hear what he said. [illegible] I endeavoured publickly [illegible] upon which Captain Mead came to me, about the Kennel of the Street, and desired me to [illegible] where he had done, he would bring Mr. Penn to me.

Court. What number do you think might be there?

Cook. About three or four hundred People.

Court. [illegible]

Read [illegible] the Prisoner [illegible]

Penn, My Lord, I went to Gracious-street, where I found a great crowd

crowd of People and I heard Mr. Penn preach to them; and I saw Captain Mead speaking to Lieutenant Cook, but what he said I could not tell.

Mead. What did *William Penn* say?

Read. There was such a great noise, that I could not tell what he said.

Mead, Jury observe this Evidence, he saith he heard him preach, and yet saith, He doth not know what he said.

Jury, take notice, he swears now a clean contrary thing, to what he swore before the *Mayor*, when we were committed: for now he swares that he saw me in *Gracious Street*, and yet swore before the *Mayor*, when I was committed, that he did not see me there. I appeal to the *Mayor* himself if this be not true; but no answer was given.

Court. What number do you think might be there?

Read. About four or five hundred.

Penn. I desire to know of him what day it was?

Read. The 14th day of *August*.

Penn. Did he speak to me, or let me know he was there; for I am very sure I never saw him.

Cla. Cryer, Call ——— *into the Court.*

Court. Give him his Oath.

——— My Lord, I saw a great number of people, and Mr. *Penn* I suppose was speaking, I see him make a motion with his hands, and heard some noise, but could not understand what he said; but for Captain *Mead*, I did not see him there.

Rec. What say you Mr. *Mead*? Were you there?

Mead, It is a Maxime in your own Law, *Nemo tenetur accusare seipsum*, which if it be not true Latine, I am sure it is true *English*, *That no man is bound to accuse himself*: And why dost thou offer to ensnare me with such a question? Doth not this shew thy malice? Is this like unto a Judge, that ought to be Counsel for the Prisoner at the Bar?

Rec. Sir, hold your Tongue, I did not yet start to ensnare you.

Penn. I desire we may come more close to the point, and that silence be commanded in the Court.

Cry. O yes, All manner of Persons keep Silence upon pain of Imprisonment ——— *Silence in the Court.*

Penn. We confess our selves to be so far from recanting, or de-

 clining

claiming to vindicate the assembling of our selves, to Preach, Pray, or Worship the Eternal, Holy, Just God, that we declare to all the World, that we do believe it to be our indispensable duty, to meet incessantly upon so good an account; nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God, who made us.

Brown, you are not here for Worshipping God, but for breaking the Law; You do your selves a great deal of wrong in going on in that discourse.

Pen. I affirm I have broken no Law, nor am I guilty of the Indictment that is laid to my charge: and to the end, the Bench, the Jury, and my self, with these that hear us, may have a more direct understanding of this procedure, I desire you would let me know by what Law it is you prosecute me, and upon what Law you ground my Indictment.

Rec. Upon the Common-Law?

Pen. Where is that Common-Law.

Rec. You must not think that I am able to run up so many years, and over so many adjudged Cases, which we call Common Law, to answer your curiosity.

Pen. This Answer I am sure is very short of my Question, for if it be Common, it should not be so hard to produce.

Rec. Sir, will you plead to your Indictment?

Pen. Shall I plead to an Indictment, that hath no foundation in Law? if it contain that Law you say I have broken, why should you decline to produce that Law, since it will be impossible for the *Jury* to determine, or agree to bring in their Verdict, who have not the Law produced, by which they should measure the truth of this Indictment, and the guilt, or contrary of my Fact.

Rec. You are a saucy Fellow, speak to the Indictment.

Pen. I say, it is my place to speak to matter of Law; I am arraigned a Prisoner, my Liberty,
which is next to Life it self, is now *Observe. At this time several*
concerned; you are many Mouths *sat upon the Bench urged hard*
and Ears against me, and if I must *upon the Prisoner to hear him*
not be allowed to make the best *down.*
of my Case, it is hard: I say again,
unless you shew me, and the People, the Law you ground your Indictment upon, I shall take it for granted, your proceedings are merely Arbitrary.

Rec.

Rec. The Question is whether you are guilty of this Indictment?

Pen. The Question is not whether I am guilty of this Indictment, but whether this Indictment be legal: it is too general and imperfect an Answer, to say it is the Common Law, unless we knew both where, and what is it; For where there is no Law, there is no Transgression; and that Law, which is not in being, is so far from being Common, that it is no Law at all.

Rec. You are an impertinent Fellow, Will you teach the Court what Law is? 'Tis Lex non scripta, *that which many have studied thirty or forty years to know, and would you have me tell you in a moment.*

Pen. Certainly, if the Common Law be so hard to be understood, its far from being very Common; but if the Lord *Cook* in his Institutes be of any consideration; he tells us, That Common Law is Common Right, and that Common Right is the great Charter Priviledges, Confirmed 9 *Hen.* 3 29. 25 *Edw.* 1. 1. 2 *Edw.* 3. 8. *Cook Inst.* 2. p. 56.

Rec. Sir, you are a troublesom Fellow, and it is not for the honour of the Court to suffer you to go on.

Pen. I have asked but one Question, and you have not answered me; though the Rights and Priviledges of every *English*-man be concerned in it.

Rec. If I should suffer you to ask Questions till to morrow morning you would be never the wiser.

Pen. That is according as the Answers are.

Rec. Sir, We must not stand to hear you talk all Night.

Pen. I design no affront to the Court, but to be heard in my just Plea; and I must plainly tell you, that if you will deny me *Oyer* of that Law, which you suggest I have broken, you do at once deny me an acknowledged right, and evidence to the whole World your resolution to sacrifice the Priviledges of English-men, to your Sinister and Arbitrary designs.

Rec. Take him away: My Lord, if you take not some course with this pestilent Fellow, to stop his Mouth, we shall not be able to do any thing to Night.

May. Take him away, take him away, turn him into the Bale-dock.

Pen. These are but so many vain Exclamations; Is this Justice or true Judgment? Must I therefore be taken away because I plead for the Fundamental Laws of *England*? However; this I leave up-

on your Consciences, who are of the Jury (and my sole Judges) that if these Antient Fundamental Laws, which relate to Liberty and Property, (and are not limited to particular Perswasions in matters of Religion) must not be indispensibly maintained and observed, who can say he hath right to the Coat upon his back? Certainly our Liberties are openly to be invaded, our Wives to be ravished, our Children slaved, our Families ruined, and our Estates led away in Triumph, by every Sturdy Beggar and Malicious Informer, as their Trophies, but our (pretended) forfeits for Conscience sake: the Lord of Heaven and Earth will be Judge between us in this matter.

Rec. Be silent there.

Penn. I am not to be silent, in a Case wherein I am so much concerned, and not only my self, but many ten thousand Families besides.

Obser. They having rudely haled him into the Baledock, *William Mead* they left in Court, who spake as followeth.

Mead, You men of the *Jury*, here I do now stand, to answer to an Indictment against me, which is a bundle of Stuff full of Lyes and Falsehoods; For therein I am accused, that I not *Vi & Armis, Illicite & Tumultuose*: Time was, when I had freedom to use a carnal Weapon, and then I thought I feared no man; but now I fear the Living God, and dare not make use thereof, nor hurt any man; nor do I know I demeaned my self as a tumultuous person, I say I am a peaceable man, therefore it is a very proper Question what *William Penn* demanded in this Case: An *OYER* of the Law, on which our Indictment is grounded.

Rec. I have made answer to that already.

Mead, Turning his face to the *Jury* said, You men of the Jury, who are my Judges, if the Recorder will not tell you what makes a Riot, a Rout, or an unlawful Assembly, *Cook*, he that once they called the Lord *Cook*, tells us what makes a Riot, a Rout, and an unlawful Assembly. ——— A Riot is when three, or more, are met together to beat a man, or to enter forcibly into another mans Land, to cut down his Grass, his Wood, or break down his Pales.

Obser. Here the Recorder interrupted him, and said, I thank you Sir, that you will tell me what the Law is, scornfully, pulling off his Hat.

Mead.

Mead, Thou mayst put on thy Hat, I have never a Fee for thee now.

Brown, *He talkes at random, one while an Independent, a nother while some other Religion, and now a Quaker, and next a Papist.*

Mead, Turpe est doctori cum culpa redarguit ipsum.

May, *You deserve to have your Tongue cut out.*

Rec. *If you discourse on this manner, I shall take occasion against you.*

Mead, Thou didst promise me, I should have fair Liberty to be heard. Why may I not have the Privilege of an Englishman? I am an English man, and you might be ashamed of this dealing.

Rec. *I look upon you to be an Enemy to the Laws of* England, *which ought to be observed and kept, nor are you worthy of such Priviledges as others have.*

Mead, The Lord is Judge between me and thee in this matter.

Obser. Upon which they took him away into the Bale-dock; and the Recorder proceeded to give the Jury their charge, as followeth.

Rec. You have heard what the Indictment is, it is for preaching to the people, and drawing a tumultuous Company after them; and Mr. *Penn* was speaking; if they should not be disturbed, you see they will go on; there are three, or four Witnesses, that have proved this, that he did preach there, that Mr. *Mead* did allow of it; after this, you have heard by subsequent Witnesses what is said against them: Now we are upon the matter of fact, which you are to keep to, and observe, as what hath been fully sworn at your peril.

Obser. The Prisoners were put out of the Court, into the Bale-dock, and the charge given to the Jury in their absence, at which *W. P.* with a very raised Voice, it being a considerable distance from the Bench, spake,

Penn. I appeal to the Jury, who are my Judges, and this great Assembly, whether the proceedings of the Court be not most Arbitrary, and void of all Law, in offering to give the Jury their Charge in the absence of the Prisoners; I say, it is directly opposite to, and destructive of the undoubted right of every English Prisoner, as *Cook* in the 2 Inst. 29. on the chap. of *Magna Charta* speaks.

Obser.

Obser. The Recorder being thus unexpectedly lasht for his extra-judicial proceedure, said with an inraged smile,

Rec. Why, ye are present, you do hear, do you not?

Pen. No thanks to the Court, that commanded me into the Bale-dock; and you of the *Jury* take notice, that I have not been heard, neither can you legally depart the Court, before I have been fully heard, having at least ten or twelve material points to offer, in order to invalid their Indictment.

Rec. Pull that Fellow down, pull him down.

Mead. Are these according to the Rights and Priviledges of English-men, that we should not be heard, but turned into the Bale-dock, for making our defence; and the *Jury* to have their Charge given them in our absence? I say these are barbarous and unjust proceedings.

Rec. Take them away into the Hole; to hear them talk all Night, as they would, that I think doth not become the honour of the Court; and I think you (i. e. the Jury) your selves would be tired out, and not have patience to hear them.

Observe, The *Jury* were commanded up to agree upon their Verdict, the Prisoners remaining in the stinking Hole; after an hour and halfs time eight came down agreed, but four remained above, the Court sent an Officer for them, and they accordingly came down: The Bench used many unworthy Threats to the four that dissented; and the Recorder, addressing himself to *Bushel*, said, Sir, You are the cause of this disturbance, and manifestly shew your self an Abettor of Faction, I shall set a Mark upon you Sir.

J. Robinson, Mr. *Bushel*, I have known you near this fourteen years, you have thrust your self upon this *Jury*, because you think there is some service for you; I tell you, You deserve to be indicted more than any man that hath been brought to the Bar this day.

Bush. No Sir *John*, There were three more before me, and I would willingly have got off, but could not.

Blunden. I said when I saw Mr. *Bushel*, what I see is come to pass, for I knew he would never yield. Mr. *Bushel*, we know what you are.

Mayn. Sirrah, You are an impudent Fellow, I will put a Mark upon you.

Obser. They used much menacing Language, and behaved themselves very imperiously to the Jury, as persons not more void of

Justice

Juſtice than ſober Education: After this barbarous uſage, they ſent them to conſider of bringing in their Verdict, and after ſome conſiderable time they returned to the Court. Silence was called for, and the Jury called by their names.

Cl. Are you agreed upon your Verdict?

Jur. Yes.

Cl. Who ſhall ſpeak for you?

Jur. Our Fore-man.

Cl. Look upon the Priſoners at the Bar; How ſay you? Is *William Penn* guilty of the matter whereof he ſtands indicted in manner and form, or not guilty?

Fore-m. Guilty of ſpeaking in *Gracious-ſtreet*.

Court. Is that all?

Fore-m. That is all I have in commiſſion.

Rec. You had as good ſay nothing.

Mayor. Was it not an unlawful Aſſembly? you mean he was ſpeaking to a Tumult of people there?

Fore-m. My Lord, this was all I had in Commiſſion.

Obſer. Here ſome of the *Jury* ſeemed to buckle to the Queſtions of the Court, upon which *Bethel*, *Hammond*, and ſome others oppoſed themſelves, and ſaid, They allowed of no ſuch word, as an unlawful Aſſembly in their Verdict; at which the *Recorder*, *Mayor*, *Robinſon*, and *Bloodworth* took great occaſion to vilifie them with moſt approbrious Language; and this Verdict not ſerving their turns, the Recorder expreſſed himſelf thus.

Rec. The Law of *England* will not allow you to depart till you have given in your Verdict.

Jury, We have given in our Verdict, and we can give in no other.

Rec. Gentlemen, you have not given in your Verdict, and you had as good ſay nothing; therefore go and conſider it once more, that we may make an end of this troubleſome buſineſs.

Jury We deſire we may have Pen, Ink, and paper.

Obſer. The Court adjourns for half an hour; which being expired, the Court returns, and the Jury not long after.

The Priſoners were brought to the Bar, and the Juries names called over.

Cal. Are you agreed of your Verdict?

Jur. Yes.

Cla. Who ſhall ſpeak for you?

Jury, Our Fore-man.

Cla.

Cla. What say you? look upon the Prisoners; Is *William Penn* guilty in Manner and Form, as he stands indicted, or not guilty?

Fore-m. Here is our Verdict, Holding forth a piece of Paper to the Clark of the Peace, which follows,

WE the Jurors, hereafter named, do find *William Penn* to be guilty of Speaking or Preaching to an Assembly met together in *Gratious Street*, the 14th of *August* last, 1670. and that *William Mead* is not guilty of the said Indictment.

Fore-m.	*Thomas Veer,*	*Charles Milson,*
	Edward Bushel.	*Gregory Walker,*
	John Hammond,	*John Baily,*
	Henry Henley,	*William Lever,*
	Henry Michel,	*James Damask,*
	John Brightman,	*Wil. Plumsted.*

Obser. This both *Mayor* and *Recorder* resented at so high a rate, that they exceeded the bounds of all reason and civility.

May. What will you be led by such a silly fellow as *Bushel*; an impudent canting Fellow? I warrant you, you shall come no more upon Juries in haste, you are a Fore-man indeed, addressing himself to the fore-man, I thought you had understood your place better.

Rec. Gentlemen, you shall not be dismist till we have a Verdict that the Court will accept; and you shall be lockt up, without Meat, Drink, Fire, and Tobacco; you shall not think thus to abuse the Court; we will have a Verdict, by the help of God, or you shall starve for it.

Pen. My Jury, who are my Judges, ought not to be thus menaced, their Verdict should be Free, and not Compelled, the Bench ought to wait upon them, but not Forestal them; I do desire that Justice may be done me, and that the Arbitrary Resolves of the Bench may not be made the measure of my Juries Verdict.

Rec. Stop that prating fellows Mouth, or put him out of the Court.

May. You have heard that he Preached, that he gathered a company of tumultuous people, and that they do not only disobey the Martial power, but the Civil also.

Pen. It is a great Mistake, would not make the Tumult, but they that interrupted us! The Jury cannot be so ignorant, as to think, that we met there, with a design to disturb the civil peace,

and met as near it in the Street as they could [illegible] leave: And (said he) because it may seem strange, to reconcile the Circumstances expresst in the Information, how that we (who are a civil and courteous people, willing to live in any Nation that will be peaceable people, and owning obedience to any Prince that governs by Law) might [illegible]

Observ. The Court being ready to hear Causes, and willing to hudle the prisoners to their Goal, and the Jury to their Chamber, Pen spoke as follows.

Pen. The agreement of twelve men is a Verdict in Law, and such a one being given by the Jury, (*whereof the Clerk of the Peace is to record it, as he will answer it at his peril.*) And if the Jury being in case [illegible] they are [illegible] English-men mind your priviledge, give not away your Right.

Observ. One of the Jury-men [illegible] therefore refused to be [illegible]

Mar. You are suffering [illegible] your principles.

Pen. Gentlemen, you must [illegible] let your patience overcome it, [illegible] dict, and that before you [illegible]

Mar. How! Is Not [illegible]

Jur. We are agreed, we are agreed, [illegible]

Observ. The Court [illegible] all night [illegible] station [illegible]

Cry. O Yes, &c.

Observ. The Court [illegible] and the Jury called in to bring in their [illegible]

Cry. OYes, &c. [illegible] prisonment.

Clerk. How say you? Is [illegible] guilty?

Jur. Yes.

Cl. Who shall [illegible]

Pen. Guilty of Speaking in [illegible]

Mar. What is this to the purpose? I lay [illegible]

Observ. [illegible] the Bar, is

Fen. Not guilty of the matter whereof he stands indicted in manner and form as above? How say you, is he guilty?

Foreman. William Penn is guilty of speaking in Gracious Street.

Mayor. To an unlawful Assembly?

Rec. No my Lord, we give no other Verdict, than what we gave last night; we have no other Verdict to give.

Mayor. You are a factious fellow. I'll take a course with you.

Penn. I desire my Jury may stand, would not yield.

Bush. Sir *Tho.* I have done according to my Conscience.

Mayor. That Conscience of yours would cut my Throat.

Bush. No my Lord it never shall.

Mayor. But I will be even with you for all that.

Penn. I desire to ask the Recorder one Question, Do you allow this to be a Verdict?

Rec. It cannot be a Verdict, because you are indicted for a Conspiracy, and one being found guilty, and the other, it could not be a Verdict.

Penn. If the Jury be not agreed, then you make of the Jury as you please.

Mead. How! Is *Not* [illegible]

Rec. No, [illegible] and if any be not guilty, [illegible] conspire alone.

[illegible] was done.

Penn. [illegible] guilty of the matter whereof he stands indicted, or not guilty?

Foreman. [illegible]

Rec. What is to the purpose? I say [illegible] And speaking to the Jury, You are not to answer? will

set

let a Mark upon you; and while I have any thing to do in the City, I will have an Eye upon you.

May. Have you no more wit than to be led by such a pitiful Fellow? I will cut his Nose.

Pen. It is intolerable that any Men should be thus menaced. Is this according to the Fundamental Law? Are not they my proper Judges by the Great Charter of *England*? What hope is there of ever having Justice done when Juries are threatned, and their Verdicts rejected? I am resolved to speak, and give vent to such Arbitrary proceedings. *Do you think the Tower render me of them worse than it found me?* And tho' you may plainly seem to condemn such for factious Fellows, who endeavor not your ends? Unhappy are those Juries, who are threatned to be fined, and starved, and mitred, if they give not in their Verdicts contrary to their Consciences.

Rec. My Lord, you must not suffer this saucy Fellow.

May. Stop his Mouth, Keeper; Prison, and Irons him to the Ground.

Pen. Do your pleasure, I matter not your fetters.

Rec. Till you I never understood the reason of the Policy and Providence of the Fundamentals, in separating the Juries from among them: And certainly it will never be well with us, till something like the Athenian Judicatures be in England.

Over. The Jury being required to go together, to find another Verdict, and returning it (saying they could give no other Verdict than what was already given) the Recorder in great Passion was running off the Bench, with these words in his Mouth. I protest I will sit here no longer to hear these things. At which the Mayor called him back, he returned, and obtained himself unto the Jury, and spoke as follows.

Rec. Gentlemen, you have but this last dayes work for; you will find the worst Sessions of Parliament, there will be a Law made, that Juries shall not be under the Protection of the Law.

Mr. *Lee, draw up another Verdict, that they may find it Special.*

Rec. We must all be bound, having all agreed, and set our hands to the Verdict.

Mr. Penn. You have not agreed, for they told the Court; I say you shall go together, and bring in another Verdict, or you shall starve; and I will have a Fire and Tobacco brought you the third time.

Rec. How say you? Is *William Penn*, &c. guilty, or not guilty?

Pen.

Fore. We have given in our Verdict, and all hereabouts, and if we give in another, it will be a force upon us to give our lives.

Maj. Take them up.

Offic. My Lord they will not go up.

Offic. The Mayor spoke to the Sheriff, and he came off his Seat, and said,

Sher. Come, Gentlemen, you must go up, you see I am commanded to make you go.

Offic. Upon which the Jury went up, and several Men to keep them without any Meat or Drink, till they brought in their Verdict.

Cry. O yes, &c. The Court is adjourned till to-morrow morning, at seven of the Clock.

Offic. The Prisoner was remanded to Newgate, where they remained all that night, and then were brought unto the Court, which being set, they proceeded as followeth.

Cry. O yes, &c. Silence in the Court upon pain of imprisonment.

Cle. Set William Penn and William Mead to the Bar. Gentlemen of the Jury answer to your Names, Sir John Robinson, John Hindmarsh, Henry Hood, Henry Michel, Benjamin Charlet, Willm. Gregory, Walter [illegible], Richard Lemmon, Thomas Damsell, [illegible] Cornish, [illegible] Greed, [illegible] your Verdict.

Jury. Yes.

Cle. Who shall speak for you?

Jury. Our Foreman.

Cle. Look upon the Prisoner. [illegible] William Penn guilty of the matter whereof he stands indicted, in manner and form, &c. or not guilty?

Offic. The Clerk had the Paper, but the Recorder from reading of it, and he commanded to read the Negative Verdict.

Fore. If you will not accept of it, I desire I may have my Pen, Ink and Paper again.

Cour. That he shall have, and all other Advantages that are allowed by Law.

Cle. How say you? Is William Penn guilty, &c. or not guilty?

Fore.

Penn. Not guilty.

Cler. How say you? Is *William Mead* guilty, &c. or not guilty?

Jury. Not guilty.

Cl. Then hark to your Verdict, you say, that *William Penn* is not guilty in manner and form as he stands indicted, you say that *William Mead* is not guilty in manner and form as he stands indicted, and so you say all.

Jur. Yes, we do so.

Court. The Bench being unsatisfied with the Verdict, commanded that every person should distinctly answer to their names, and give in their Verdict, which they unanimously did, in saying, *Not guilty*, to the great satisfaction of the Assembly.

Recorder. I am sorry, Gentlemen, you have followed your own judgments and opinions, rather than good and wholsom advice, which was given you. God keep my life out of your hands; but for this the Court fines you forty marks a man, and imprisonment till paid. At which *Penn* leapt up towards the Bench, and said.

Penn. I demand my liberty, being freed by the *Jury*.

May. No, you are in for your Fines.

Penn. Fines for what?

May. For contempt of the Court.

Penn. Time, if it be according to the Fundamental Laws of *England*, that any English man should be fined or amerced, but by the judgment of his Peers, or *Jury*, since it expressly contradicts the fourteenth and twenty ninth Chap. of the *Great Charter* of *England* which say, No Freeman ought to be amerced, but by the Oath of good and lawful men of the Vicinage.

Rec. *Take him away. Take him away. Take him out of the Court.*

Penn. I can never urge the Fundamental Laws of *England*, but you cry, Take him away, take him away, but I do wonder, *sure the Spanish Inquisition has a place in the worst of hearts*, [illegible]

Court. [illegible] to the Bridewell, and from thence [illegible] for the payment of their Fines, and so were their *Jury*.

Pen. The Evidence, you have read in the Face of the whole Nation, is no more than this, That *William Penn* was speaking in Grace-Church-Street, to an Assembly of people, but [illegible] which is to grant a contradiction, as he that runs

An Appendix, *by way of* Defence *for the* Prisoners, *or what might have been offered against the Indictment, and illegal proceedings of the Court thereon, had they not violently overrun it, and stopp'd them.*

UPon a sober disquisition into several parts of the Indictment we find it so wretchedly penn'd, as if it were nothing else but a meer composition of Words, rather calculated to the malicious designs of the Judges, than to the least verity of fact committed by the Prisoners.

To prove this, what we say, will be a main help to discover the Arbitrary proceedings of the Bench in their frequent Menaces to the Jury; as if it were not enough their Business to try, as to condemn the Prisoners, and that not to search for any fact they had committed, as what the Court would have suggested to the Jury to have been their Fact.

Sect. 1. It is the constant Common Law of *England*, *That no man should be taken, Imprisoned, Arraigned, Dispossessed of his Freehold, of his Liberties, or free Customs, but by the Judgment of his Peers, which are vulgarly called a Jury, from* Jurare, *because they are sworn to do Right.*

Sect. 2. The only Evidence that is given the Jury, in order to a Verdict is,

First, The *Evidence* given of the Fact committed, by the Person indicted.

Secondly, The knowledge of that Law, Act, or Statute the indictment is grounded upon, and which the Prisoners are said to have transgressed.

Sect. 3. [illegible] deprived, of that [illegible] do allow, [illegible] speak here to matter of Fact and Law.

Sect. 4. The Evidence, you have read in the Tryal, the utmost import of which, is no more than this; That *William Penn* was speaking in *Gracious-Street*, to an Assembly of people that knew not what he said, which is so great a contradiction, as he that runs may

may read it, for no man can say another man preaches, and yet understand not what he saith, he may conjecture it, but that is a lame evidence in Law: it might as well have been sworn, That he was speaking of Law, Physick, Trade, or any other matter of civil concernment. Besides, there is no Law against Preaching what is truth, whether it be in the street, or in any other place; nor is it possible, that any man can truly sweer, that he preaches Sedition, Treason, &c. unless he so heard him, that he could tell what he said.

Sect. 5. The Evidence further saith, That *it was there, but still being in Gracious-Street be a fault, and he saw* (speak the words I have set down, he only saw) *to* [illegible] the whole Evidence is useless, and impertinent; but what they want of that, they endeavour to supply with Indictment, whose parts we proceed to consider.

Exceptions against the Indictment.

Sect. 6. It saith, That the prisoners *were seen upon the* 15*th day of August*, 1670. whereas their own Evidence affirms it to be upon the 14th day of *August*, &c.

Sect. 7. The next [illegible] which is so great a Lye, that the Clerk had better cover it, than to tell the Jury, it was only a Book or Forme, urging, that the man cried for clipping of money, &c. and not the same words used in his Indictment.

But that Malice is the Lady, at whose Altar it was too weak to prevail with us, we desire it may be considered, that the same words may be of more or fewer, and one of form at one time, that at another. And though we grant they can have little force with any Jury in a Capital case, for meer Clipping; yet they are words that give so just a ground of jealousie, nay, that carry so clear an Evidence of [illegible] where [illegible] truly proved and affirmed of any Malefactor, as that they are [illegible] roots from whence do spring those branches which [illegible] an Indictment terrible, and an Assembly truly the terror of the people, viz.

Sect. 8. [illegible] which is true, as [illegible] fall) that will evidently appear to all [illegible] to assemble, with [illegible] to [illegible] Full [illegible] to [illegible] to say English Subjects, black is white, consciences to impudent a falsity true.

In

In short, because to worship God can never be a crime, no Meeting or Assembly, designing to worship God, can be unlawful. Such as go about to prove an unlawful Assembly, must prove the Assemblers intent not to worship God, but to do mischief: because no man can know another man's meaning, and therefore it is impossible that any should prove such an Assembly unlawful. That a proper or unlawful Assembly, according to the definition of the law, which I mentioned before, is where persons are met together with design to use violence and to do mischief, and that they have met with no such intention, is apparent to the whole world: therefore their Assemblies are not unlawful: he that hath only right to be worshipped, which is God, hath only right to intimate how he will be worshipped; and such as worship him in the way they apprehend him to have instituted, are so far from being unlawful Assemblers, that therein they do but render the duty they owe to God.

[*Terrae filius*] ... impossible as much as Dr. Oldesley, or an Assembly full of Noise, Tumult and Confusion, nine-tenths of which, and sometimes the whole, proceeds from neither Religious Difference ... and yet ... to God Almighty ... which ... Certainly such as call their Meetings tumultuous, as to break the Peace, offered the greatest violence to common words, that can be well imagined ... such ... Adulterously ... because they ... such ... are required to ... wholly wanting ...

Certainly ... the breach and disturbance of the ... of tumultuary: but ... where there was none observed.

Sect.

Sect. 9. [*That the first Meeting was by Agreement before-hand made.*]

But if Persons that never saw each other, nor convers'd together, neither had Correspondence by any other hand, cannot be said to be agreed, so any action, before it is done, when the Prisoners were far from an Agreement, for they had present Acts, Counsel, nor Correspondence, directly, nor indirectly, before the Officers came to disturb the Assembly. [illegible] would have stretch'd the word, [illegible] to nought the Counsels of the wicked, prevented their cruel designs.

Sect. 11. [*That* William Mead *did abet the said* William Penn *in preaching.*]

No rules can be laid to abet strangers, when they are both unknown to each other, especially in this case, where abetting follows agreeing, and agreeing supposes fore-knowledge. Nay, the word abet in Law signifies to encourage, *encourage himself* a person, which *W. Mead*, could not be said to do, in reference to *W. Penn*, they being to great strangers [illegible] and at so great a distance, for the Evidence proves that he [illegible] with Lieutenant *Cook*, and Lieutenant *Cook* [illegible] make his way to *W. Penn* for the Crowd.

Sect. 12. [*That W. Penn's preaching and speaking there, was a great concourse and resort of People, to surround and continue a long time in the street.*]

But this is so improbable to believe, that the very nature of a Tumult admits of no such thing as preaching; but implies a disorderly multitude, where all may be said to speak, rather than any to hear.

Sect. 1. [*In contempt of the King and his Laws.*]

They are so far from contemning the King and his Laws, that they are obliged and constituted by those very principles, to obey every Ordinance of man for the Lord's sake, *but not against the Lord for mans sake*; which is the question in hand. Besides, their continuance there, was not in contempt, but by the permission of the chief Officer present, that came there by the Kings authority; nor is it for the honour of the King that such persons should be said to act in contempt of his Laws, as only meet to honour God and his Laws.

It is far from subverting and breaking the Kings peace, or [illegible]

Assemblies,

[illegible] *people and* [illegible] *example of all other the like*

[illegible]

[illegible] *esteem rather occasion of trouble, and evil, than service and reputation:*

No, they need not go so far, they have too many (God Almighty

[illegible]

Persons, and designing mutually the subversion of the Law, and

Properties and Privileges of the *English* Nation are very modern.

Sect. 10. For *Horn* in his *Mirror of Justice* (writ in *Edward* the first's time) *Fol.* 1. tells us, "That after God had abated "the Nobility of the *Britans*, he did deliver the Realm to men "more humble and simple, of the Countries adjoyning, to wit, "the *Saxons*, which came from the parts of *Almain* to conquer "this Land, of which men there were forty Soveraigns, which did "rule as Companions; and those Princes did call this Realm *Eng-* "*land*, which before was named the greater *Britain*: Those, after "great wars, tribulations and pains, by long time suffered, did chuse "a King to reign over them, to govern the people of God, and "to maintain and defend their persons, and their goods in quiet, "by the Rules of Right, and at the beginning they did cause him "to sware to maintain the holy Christian faith, and to guide his "people by Right, with all his power, without respect of per- "sons, and to observe the Laws. And after when the Kingdom "was turned into an Heritage, King *Alfred*, that governed this "Kingdom about an hundred seventy one years before the Conquest, "did cause the great men of the Kingdom to assemble at *London*, "and there did ordain for a perpetual usage, That twice in the "year, or ofner, if need should be, in time of Peace, they should "assemble at *London* in Parliament, for the Governments of Gods "People, that men might live in quiet and receive right by cer- "tain usages and holy Judgments.

"In which Parliament (said our Author) the Rights and Pre- "rogatives of the Kings and the Subjects are distinguished and set "apart; and particularly by him expressed, too tedious here to "insert, amongst which Ordinances we find, "That no man should "be imprisoned, but for a capital Offence. And if a man should "detain another in prison, by colour of right (where there was "none) till the party imprisoned died; he that kept him in Prison "should be held guilty of murder, as you may read, pag. 33. "And pag. 40. "He is declared guilty of Homicide, by whom a "man shall die in prison, whether it be the Judges, that shall "too long delay to do a man right, or by cruelty of Gaolers, or "suffering him to die by Famine; or when a man is adjudged to do "penance, and shall be surcharged by his Gaoler with irons, or "other pain, whereof he is deprived of his life. And p. 114. That "by the antient Law of England it was Felony to detain a man "in prison, after full Bail offered, where the party was ap- "pealed of Treason, Murder, Robbery or Burglary, pag. 35. "None ought to be put in common prisons, but only such as were

AT-

"ATTAINTED, or principally APPEALED of In-
"DICTED of false or wrongful Imprisonment, to render have
"the ancient Laws and Constitutions of this Realm seen of the
"Liberty of them by their Peers, that no man ought to be Im-
"prisoned, but for a Capital Offence, &c. Trespass, Murder, Rob-
"bery, &c. Berghers, &c.

Next Lambert (in his excellent translation of the Saxon Laws, from King Ina's time, &c.) tells us, That the Indenting to put the great Obligation, and strong Condition, the people were wont to put upon their Kings, To observe the ancient Fundamental Laws, and free Customs of this Land, which were hand-ed down from one age to another. And in the 17th Chap. of Bur. the Confessors Laws, the mention there made of a Kings duty is Obligation of Nature, &c. [illegible] and by solemn Oath Laws, this doctrine remained in the Saxons time, and was [illegible] Kings and Saxons Power, was Su-preme Law, or the Kings Will was Supreme Law, but not the People Performance [illegible] and Liber-ties [illegible] by [illegible] Would he would [illegible] with the Bishops [illegible] the King, were [illegible] and [illegible] in the Great Council [illegible] peals of Treason [illegible] those ought else put in common prisons, but only Nobles were

A

A Rehearsal of the Material Parts of the Great Charter of England.

HENRY, *by the Grace of God, King of England, &c. To all Archbishops, or Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and his faithful Subjects, who shall see this present Charter, Greeting.* Know ye, That we unto the honour of Almighty God, and for the Salvation of the Soul of our Progenetors, and our Successors, Kings of *England*, to the advancement of holy Church, and amendment of our Realm, of our meer and free will have given and granted *to all Arch Bishops, &c. and to all Freemen of this our Realm*, those Liberties under-written, to be holden and kept in this our Realm of *England* for evermore.

We have granted and given to all Free-men of our Realm, for us and our Heirs for evermore, those Liberties under-written, to have and to hold to them, and their Heirs, of us and our Heirs for ever.

A Free-man shall not be Amerced for a small fault, but after the *quantity of the fault*: and for a great fault, *after the manner thereof* saving to him his Contenements or Free-hold. And a Merchant likewise shall be amerced *saving to him his Merchandize*; and none of the said Amerciaments shall be assessed, *but by the Oath of good and lawful men of the Vicinage.*

No Free-man shall be taken, or imprisoned, nor be disseized of his Free-hold, or his Liberties, or his Customs, or be Outlawed or exiled, or any other wayes destroyed, nor we will not pass upon him, nor condemn him, *but by lawful Judgment of his Peers, or by the Law of the Land. We shall sell to no man, we shall deny nor defer to no man either Justice or Right.*

And to all these Liberties, Liberties aforesaid, which we have granted to be holden in this our Realm, as much as appertaineth unto us and our Heirs, we shall observe, and all men of this our Realm, as well Spiritual as Temporal, (as much as in them is) shall observe the same against all persons in like wise. And for this our Gift, and Grant of these Liberties, and of other contained in our Charter of Liberties of our Forest, the Arch-Bishops, Bishops, Abots, Priors, Earls, Barons, Knights, Free-holders, and others our Subjects, have given unto us the fifteenth part of all their moveables. *And we have Granted unto them on the other part, that neither we, nor our Heirs, shall procure or do any thing whereby the*

Liberties

Liberties in this Charter contained shall be infringed or broken; and if any thing be practised by any person contrary to the premises, *shall be had of no force nor effect*. These being Witnesses, *S. of the* Arch-Bishop of *Canterbury*, &c. We ratifying and approving those Gifts and Grants aforesaid, confirm and make strong all the same, *for us and our Heirs perpetually*, and by the tenor of these presents do renew the same willingly; and granting for us and our Heirs, that this Charter, in all and singular his Articles for evermore shall be stedfastly, firmly, and inviolably observed. *And if any Article in the same Charter contained, yet hitherto peradventure hath not been observed, nor kept, we will and by our Authority Royal command henceforth firmly they are observed.* Witness, &c.

The Sentence of the Curse given by the Bishops, with the Kings consent, against the Breakers of the great Charter.

IN the year of our Lord 1253. *the third day of May, in the great Hall of the King at* Westminster, *in his presence, and by the consent of the Lord* Henry, *by the Grace of God, King of* England, *and the Lord* Richard, *Earl of* Cornwall, *his Brother*, Roger Bigot, *Earl of* Norfolk, *Marshal of* England, Humphry, *Earl of* Hereford; Henry, *Earl of* Oxford; John, *Earl of* Arundel, *and other Estates of the Realm of* England; *we* Boniface, *by the mercy of God Arch-Bishop of* Canterbury, *Primate of* England, E. *of* London, H. *of* Ely, S. *of* Worcester, E. *of* Lincoln, W. *of* Norwich, P. *of* Hereford, W. *of* Salesbury, W. *of* Durham, R. *of* Exeter, M. *of* Carlile, W. *of* Bath, E. *of* Rochester, T. *of St.* Davids, *Bishops, appareled in Pontificals, with* [illegible] *burning, against the Breakers of the Charter of Liberties, and of the Liberties and other Customs of this Realm of* England, *and namely those that are contained in the Charter of the common Liberties of* England, *and Charter of the Forest, by sentence of Excommunication in this form. In the authority of Almighty God, the Father, the Son and the Holy Ghost, &c. of the blessed Apostles* Peter *and* Paul, *and of all Apostles, and of all Martyrs, of blessed* Edw. *King of* England *and of all the Saints of Heaven, We Excommunicate and Accurse, and from*

from the benefit of our holy Mother the Church we sequester all those that hereafter willingly and maliciously deprive or spoil the Church of her Rights, and all those that by any craft or willingly do violate, break, diminish, or change the Churches Liberties, and free customs contained in the Charter of the common Liberties, and of the Forest granted by our Lord the King to Arch-bishops, Bishops, and other Prelates of England, and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm; and whatsoever secretly and openly, by deed, word or counsel do make Statutes against them, being made, and that bring in Customs to keep them, when they be brought in, against the said Liberties, or any of them; and all those that shall presume to judge against them; and all and every such person, before-mentioned, that willingly shall commit any thing of the premisses, let them well know, that they incur the aforesaid Sentence ipso facto.

A Confirmation of the Charters and Liberties of *England* and of the *Forrest*, made the twenty fifth year of *Edward* the first.

Edward, by the Grace of God, King of *England*, Lord of *Ireland*, Duke of *Guyan*, To all those that these present Letters shall here or see, greeting. Know ye that we to the honour of God, and to the profit of our Realm, have granted for us, and our Heirs, and the Charter of Liberties, and the Charter of Forrest, which were made by common assent of all the Realm, in the time of King *Henry* our father, shall be kept in every point, without Breach; and we will that the same Charter shall be sent under our Seal, as well to our Justice of the Forrest, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained, that they cause the aforesaid Charter to be published, and to declare to the people, that we have confirmed them in all points; and that our Justices, Sheriffs, Mayors, and other Ministers, which under us have the Laws of our Land to guide, shall allow the same Charters pleaded before them in Judgment, in all their points; that is to wit, the Great Charter of the Common Law, and the Charter of our Forrest, for the good of our Realm.

And we will that [illegible] shall be sent under our Seal to Canterbury [illegible] there to remain, and shall [illegible] year.

And that all [illegible] pronounce the Sentence of [illegible] that by word, deed or counsel do contrary to the foresaid Charter, or that in any point do break or undo them. And that the said Curse be twice a year denounced and published by the Prelates aforesaid: and if the same Prelates, or any of them be remiss in the denunciation of the said Sentences, the Arch-Bishops of Canterbury and York, for the time being, shall compel and distrain them to the execution of their duties in form aforesaid.

The Submission of the Clergy to [illegible] the Breakers of the Articles above-mentioned.

[illegible] Robert [illegible] Sovereign Lord [illegible] from the Body of our Lord Jesus Christ,

Christ, and from all the Company of heaven, and from all the Sacraments of holy Church he [illegible] evermore.

We may here see, that in the darkest Times of forain Popery they were not left without a fence against Force, and the neceſſity of *Liberty* and *Property*, to be inviolably enjoy'd which brings us to the cauſe of it.

First, Then cauſe of this famous Charter, was, as we have already ſaid, the Incroachments that were made by ſeveral Miniſters of precedent Kings, that almoſt become Cuſtomary, and which had near extinguiſht the free Cuſtoms due to Engliſhmen: How great care it coſt our Anceſtors, it underſtood us to ignore, or by our ſilence to neglect; It was that *Tempeſtuous Morning*, which failed not to diſable many raging Beaſts, from ruining *the pleaſant Vineyard of Engliſh Freedom*, that otherwiſe would not have left a fruitful Vine in being. About which we may give the Reader an account of ſome, with their Wages as well as Works.

2d. The Reaſon of it, is ſo great, that it ſeems to be its own. It is the very *Image* and *Expreſſion of Nature*, *Liberty*, and *Property*; Points of ſuch eminent importance, as without which no Government can be ſaid to be reaſonable, arbitrary, and tyrannical it allows every man that liberty God and nature have given him, and the ſecure poſſeſſion of his property, from the ſo rude or [illegible] of his Neighbour, or any who do their contribution. It [illegible] no man in a fault, only it provides equal and juſt ways to have the Offender tryed, conſidering the malice of many Proſecutors, and the great value of Liberty and Life.

3d. The End of it was the moſt noble of any earthly projection, to wit, *the reſtoring of their Antient Laws*, held for many hundred years, by conſtant claim, that they living might be re-eſtabliſht in their primitive liberty, and their poſterity ſecured in the poſſeſſion of ſo great a happineſs.

Amongſt thoſe many then Advantages, that accrew to the free people of *England*, from this great Charter, and thoſe many confirmatory Statutes of the ſame, we ſhall preſent the Reader with the light of ſome few, that may moſt properly fall, under the conſideration and neceſſity of thoſe preſent times, as found in our Common Law Books.

1ſt [*That every Engliſh Subject is born free.*]

2d [*That no free man ſhall be taken, impriſoned, diſſeiſed, or impriſoned, by any Petition or Suggeſtion to the King or his Council, unleſs by the Judgment and proſecution of good and lawful men, before ſuch*

forth against him.] 25 Edw. 3. chap. 4. 25 Ed. 3. chap. 4. 17 R. 2. chap. 6. Rot. Parl. 43 Ed. 3. Book. 2 Inst. 43.

2dly [*That no such Freeman shall be disseized of his Free-hold, &c.* viz. *Liberties, or Free Customs.*] Hereby is intended, (saith *Cook*) That *Lands, Tenements, Goods, and Chattels*] shall not be seized into the Kings hands contrary to this great Charter, &c. 43 *Ass.* pag. 12. 43 *Edward* 3. *Cook* 2. Instit. 32. Neither shall any such Freeman be put from his Lively-hood without answer, *Cook* 2 Inst. 47.

3dly [*That the Free-man shall keep Land*] *unless he forfeit, and into himself voluntarily flies from the justice of the law.* 2 & 3 Phil. & Mar. Dict. 14. 149.

4thly [*No Free-man shall be exiled*] *Cook* said, There are but two Cases, or points, in which any man may be exiled: Only by Act of Parliament (which happening is not contrary to the Great Charter) —— the other in cause of abjuration, for felony by the Common Law, &c. *Cook* 2. Inst. 47.

5thly [*Nor Free-man shall be destroyed*, that is, He shall not be *forejudged of Life, Limb, Disherited or put to torture, or Death*] Every Oppression against Law, by colour of any usurped Authority, is a kind of Destruction, and it is the worst Oppression that is done by colour of Justice. *Cook* Institution 2. 48.

6thly [*That no free-man shall be taken, or imprisoned, disseized, out-lawed, exiled or be destroyed of his Liberties, Free-holds, and Free Customs, but by THE LAWFUL JUDGMENT OF HIS PEERS*] (vulgarly called *Jury.*) So that the Judgment of any fact or person, is by this Fundamental Law, referred to the Brests, and consciences of the jury? it's rendred in Latine *PER LEGALE JUDITIUM*, that is Lawful Judgment: from whence it is to be observed, that the Judgment must have Law in it, and be according to Law, which cannot be where they are not Judges, how far the fact is legal, or the contrary; *Juditium quasi Juris Dictum* [*The Voice of Law and Right*] and therefore is their Verdict not to be rejected, because it is supposed to be the truth, according to their Consciences: For *Verdict* from *vere dictum veritatis*, [*a true Saying or Judgment*] 9 *Hen.* 3. 26. *Cook Inst.* 1. 32. *Inst.* 4. 207. *Cook* says, that by the word LEGALE three things are implyed.

1st.) That this was by Law, before the Statute, and therefore this Statute but declaratory of the ancient Law.

2d.) That their Verdict must be legally given; wherein is to be

be observed. (1st) *The Jury ought to hear no Evidence, but in the hearing and presence of the Prisoner.* (2d) *The Jury cannot send to ask any Question in Law of the Judges, but in the presence of the Prisoners, for* De facto *jus oritur.*

(3d) The Evidence produced by the Kings Counsel, being given, *the Judges cannot collect the Evidence, nor urge it by way of charge to the Jury, nor so much as confer with the Jury about the Evidence but in the presence of the Prisoners.* Cook Inst. 2. 29.

8th [*Or by the Law of the Land*] It is a *Synonimous* expression, importing no more *than by the Tryal of Peers or a Jury*; for it is sometimes rendered not (*or*) disjunctively, but (*and*) which is connectively, however, it can never signifie any thing contrary to the old way of trying by Peers; for then it would be connected to a contradiction.

Besides, *Cook* well observes, that in the 14th Chap. of the 25th *Edw.* 3. *Per Legem Terræ*, imports no more than Tryal by due process, and writ Original at Common Law, which cannot be without a *Jury*; therefore, *Per Judicium parium & per Legem Terræ*, signifie the same priviledge unto the people, *Cook Inst.* 2. pag. 50.

Thus have we presented you with some of those Maxims of Law, dearer to our Ancestors, then life, *Because they are the defence of the Lives and Liberties of the people of* England; it is from this 29th chap. of the Great Charter, *Great*, not for its Bulk, but the Priviledges in it; as from a spacious Roof, that so many fruitful Branches of the Law of *England* springs, if *Cook* may be credited. But how *sacred* so ever they have been esteemed, and still are by noble and just minds, yet so degenerate are some in their proceedings, that conscious to themselves of their baseness, they will not dare stand the touch of this great Charter, and those just Laws grounded upon it, of which number we may truly rank the Mayor, and Recorder of *London*, with the rest of their wise Companions, in their late Sessions, at the Old Baily, upon the occasion of the Prisoners.

First, The prisoners were taken, and imprisoned without Presentment of good and lawful men of the Vicinage, or the Neighbourhood, *but after a Military and Tumultuous manner, contrary to the grand Charter.*

2d *They refused to produce the* Law *upon which they proceeded*, leaving thereby the Prisoners, *Jury*, and the whole Auditory in the dark.

3d

2d *They refuse the Prisoners to plead*, and directly withstood that great Privilege mentioned in the last Chap. 25 *Edw. 1. Where all Justices, Majors, Sheriffs, and other Ministers that have the Laws of the Land, to guide them, are required to allow the said Charter to be pleaded in all its points, and to all causes that shall come before them in Judgement*, for no sooner did *William Penn*, or his Fellow-Prisoner, urge upon them the great Charter, and other good Laws, but the Recorder cryed, *Take him away*, *Take him away*, put him into the Bale-dock or Hole, from which the Recorder can never deliver himself, unless it be by avowing *the Laws are not his Guide, and therefore does not suffer them to be pleaded before him in Judgement.*

4ly *They give the Jury their charge, in the Prisoners absence, encouraging by his appearance the Jury to acquit them.*

5ly The verdict (being given, which is in Law, DICTUM VERITATIS (*The voice of truth be sure*) because not suitable to their humor) *They did five times reject it, with many abusive injurious, and menacing Expressions of the Court*, (such as no President can afford us) as if they were not the only constituted Judges by the Fundamental Laws of the Land, *but mere Cyphers only to affright fainting, fearful slaves of Figures.*

6ly Though the Prisoners were cleared by their Jury, yet were they contained for the non-payment of their Fines, laid upon them, for not pulling off their Hats, in which the Law is notoriously broken.

(1st) *In that no man shall be amerced, but according to the offence, and they have found such fact Mackl.*

(2d) *They were not amerced by any Jury, but at the will of an irensed Bench.*

Besides there is no Law against the Hat, and where there is no Law there can be no Transgression, and consequently no legal Amercement or Fine, 9 *Hen.* 3. chap. 14. But how the Prisoners were trapanned into it, is most ridiculous on the side of the Contrivers, that finding their Hats off, would have them put on again by their Officers, to feed the Prisoners with a tryal of putting them off again, which Childish Conceit not being gratified they fined them the forty Marks aforesaid.

7ly Instead of accepting their Verdict as good in Law, and for the true decision of the matter, according to the great Charter (that constitutes them proper Judges) and which bears them out with

with many other good Laws, in what they agreed to in a Verdict) the Court did most illegally and tyrannically fine and imprison them, as in the Tryal was expreſt. And that notwithſtanding the late juſt reſentment of the Houſe of Commons, in Judge *Keeling's* Caſe, were they reſolved, that the preſident and Practice of Fining, and Impriſoning of *Juries*, *for their Verdicts*, were *illegal*. And here we muſt needs obſerve two things.

1ſt That the Fundamental Laws of *England* cannot be more ſlighted, and contradicted in any thing (next *Engliſh* men being quite deſtroyed) than in not allowing them to have that equal *medium*, or juſt way of tryal, that the ſame *Law* has provided, *which is by a Jury*.

(2d) That the late proceeding of the Court, at the Old Baily, is an evident Demonſtration, that *Juries* are now but *mere Formality*, and that the partial charge of the Bench muſt be the Verdict of the Jury; *for if ever a Rape were attempted on the Conſcience of any Jury, it was there*. And indeed the ignorance of Jurors, of their authority by Law, is the only Reaſon of their unhappy cringing to the Court, and being ſcared into an *Anti-Conſcientious Verdict*, by their illegal threats.

But we have dived to an *Age*, ſo deſtitute from all humanity and reaſon, as well as Faith and Religion, that ſome ſtick not to turn *Butchers to their own Priviledges, and Conſpirators againſt their own Liberties*. For however wiſer *Charles* had once the reputation of a ſtained unalterable Law, and few hardned enough, to incur and bear the laſt Curſe, that attends the Violaters of it, yet it is frequently objected now, that the benefits there deſigned are *but temporary*, and therefore liable to alteration, as other Statutes are. *What Game ſuch Perſons play at may be lively read, in the attempts of* Dyonyſius, Phalaris, *&c. which would have will and Power be the peoples Law.*

But that the Priviledges due to *Engliſhmen*, by the great Charter of *England*, have their Foundation in Reaſon and Law, and that thoſe new *Conſtructions* are, to introduce *will* and *Power*, deſerve to be deteſted by all perſons profeſſing ſence and honeſty, and the leaſt Allegiance to our *Engliſh* Governours, we ſhall make appear (after a ſober conſideration of the nature of thoſe Priviledges charged in that Charter).

(1) The Ground of alteration of any Law in Government (where there is no *Anarchy*) muſt ariſe from the univerſal *def-*

con-

Secondly

Secondly, That they have Free-holds, *that's Property.*

Thirdly, That Amercement, or Penalties should be proportioned to the faults committed, *which is Equity.*

Fourthly, That they shall lose neither, but when they are adjudged to have forfeited them in the judgment of their honest neighbours, according to the Law of the Land, *which is lawful Judgment.*

It is easie to discern to what pass the Enemies of the *great Charter* would bring the people of *England.*

First, They are now Free-men; *but they would have them Slaves.*

Secondly, They have now right unto their *Wives, Children,* and *Estates,* as their undoubted property; *but such would rob and spoil them of all.*

Thirdly, Now no man is to be amerced, or punished, but suitable to the fault; *whilst they would make it suitable to their revengeful minds, and unlimited wills.*

Fourthly, Whereas the Power of Judgment lies in the Breasts and Consciences of twelve honest Neighbours; *they would have it at the discretion of Mercenary Judges.* To which, we cannot chuse but add, That such discourses manifestly strike at the present constitution of Government; for it being founded upon the *Great Charter,* which is the antient Common Law of the Land, as upon its best Foundation; none can design the concealing of the *Charter,* but they must necessarily intend the extirpation of the *English Government;* for where the cause is taken away the effect must consequently cease. And as the restauration of our Antient *English* Laws, by the Great Charter, was the soveraign Balsom which cured our former Breaches, so doubtless will the continuation of it prove an excellent prevention to any future disturbances.

But some are ready to object, *That the Great Charter cannot be a rule of Justice to Us, because it was granted by force, and by an Usurper, there is the same reason, why the Laws may have the like.*

To which we answer, That the reason of alteration cannot be the same, therefore the consequence is false. The one being a matter of Opinion, about Faith and Religious Worship, which is various, as the uncertain apprehensions of men; but the other a matter of so immutable Rights, and Justice, that all Governments, however differing in their religious Opinions, have concentured and

agreed to the Certainty, Equity, and indisputable Reasons of preserving their Fundamental Laws; so that Religion might not risen and fallen with the differing religious Opinions that have been in this Land, but have ever remained, as the stable Right of every individual Freeborn man, purely as an English-man. Otherwise, if the civil Foundations of the People, had fallen with the pretended Religious Privileges of the Popish Tyranny at the first Reformation (which needs be supposed by this Objection) how easie had ended here, that we had remained in Spiritual Popedom, at the cost of a Civil Bondage; which certainly were far from the intention of the first Reformers and probably an unseen consequence, by the Objectors to their idle Opinion.

As thirdly, There is no time, in which any man may plead the necessity of such an Action; as is unjust in its own nature, which he must needs voluntarily be guilty of. That doth defeat or cancel that Law by which the subject of Liberty and Property is confirmed and maintained to the people. And consequently, no person may legally attempt the Subversion or Extirpation of the force of the Great Charter, [illegible] to prove the inconsistances out of both.

[illegible] 28 Edw. cap. 3.

[illegible] 25 E. 3. c. 4.

[illegible] 36 [illegible] 3.

[illegible] 42 E. 3. Of Parliaments, That if any [illegible] of the Great Charter, it

[illegible] 2d Edw. Chap.

[illegible] 4th.

4ly. Another Statute runs thus, *If any Ambassador, or Minister, that resideth by Authority of the Common Law, shall have his Goods or Chattels seized, and yet no Prince, &c. shall thereupon make right by the King's Letters, or counsel the King any thing that may concern his Privilege or Dignity.* 28 Edw. 3. chap. 7. *Neither shall Right be any thing delayed for the Great or Little Seal.* This is the Judges Charge and Oath, 2 E. 3. chap. 8. 14 Ed. 3. 14. 11 R. 2. chap. 10.

5ly. Such care hath been taken for the preservation of this Great Charter, that in the 25th of *Edward* I. it was enacted, *That Confirmed Charters should have force, that there should be chosen in every Shire Court, by the Commonalty of the same Shire, three Substantial Men, Knights, or other lawful, wise, and well disposed Persons, to be Justices, which shall be assigned by the King's Letters Patents, under the Great Seal, to hear and determine (without any other Writ but only their Commission) such Plaints as shall be made upon all those that commit, or offend against any point contained in the aforesaid Charters.* 25 Edw. 1. chap. 1.

6ly. The necessity of preserving these *Charters* hath appeared in nothing more, than in the Care they have taken to confirm them; which as *Cook* observes, hath been by thirty two Parliaments *Confirmed, Established,* and *Commanded to be put in Execution,* with the condign punishment they had inflicted upon the Offenders. *Cooke Proem.* to the second Book of his Inst.

7ly. Lastly, in the notable Petition of *Right*, many of these great Privileges, and free Customs, contained in the aforesaid Charters and other good Laws, are Recited and Confirmed, 3 Car. 1.

8ly. The late King, in his Declaration at *New Market*, 1641. acknowledged the Laws *to be the rule of his Power.* By which he doubtless intended *Fundamental Laws*; since it may be the great advantage of Countries, sometimes to suspend the execution of *temporary Laws.*

Having so manifestly evidenced that *Honorable Esteem*, our Ancestors had of that *Golden Rule* (the Great Charter) with their good Successe, in preserving it from the defacing of Usurpation and Faction, We shall proceed to give an account of their just Resentments, and earnest Prosecution against some of those, who in any Age have adventured to undermine that antient Foundation, by introducing an Arbitrary way of Government.

As for Instances of their Resentments in his time, I find (in Translation) *That the Kings in those dayes were by their Coronation strictly obliged*

to keep the Ancient Fundamental Laws and Customs of this Land (of which this great Charter is but declaratory) so did King Alfred (a reputed the most famous Compiler of Laws amongst them) give this direction of his Judges against his own Judges, for Acting contrary to those Fundamental Laws; that he commanded the Execution of [illegible]; which may be a seasonable Caveat to the Judges of our times.

2do Hubert de Burgh, once Chief Justice of England having advised King Hen. 3 in the eleventh year of his Reign, (in his Council holden at Oxford) to Repeal this Great Charter, and that of the Forest was fully sentenced according to Law, by his Peers, in open Parliament, when the Statute called CONFIRMATIO-NES CHARTARUM was made; in the First chapter thereof Magna Charta is peculiarly called the Common Law, 25 Edw. 1.

3dly. The Spensers (both Father and Son) for their Arbitrary Domination, and rash, and evil Counsel to Edw. the 2d (by which he was seduced to break the great Charter) were banished for their pains, as Cook relates.

4thly. The same fate attended Trefilian and Belknap, for their illegal proceedings.

5thly. The Breach of this Great Charter, was the Ground, that exemplary Justice, done upon Empson and Dudley, whose case is very memorable in this point; For though they pretended Hen. 7. in what they did, and had an Act of Parliament for their Warrant, made the eleventh of his Reign; yet have they their due reward from the hands of Justice, though they were against Equity and common Reason, and so unjustifiable Grounds of Apology, for the self-same Abuse, and the Oppressions of the people they were found guilty of. Hear what the Lord Cook further saith, concerning the matter. "There was an Act of "Parliament, made in eleventh year of King Hen. 7. which had a "plain and strong Preamble, pretending to avoid divers mischiefs, "which were then [illegible] by the Nobility, and Commonalty. And "by the Statute of the Dissolution of the Monasteries, [illegible] "not rightly [illegible] Act of the Commonalty. And "by the Statute of the Dissolution of the Land, and the Purview of that "Act was, that the execution contrary, EX DIAMETRO, "[illegible] against God, and the great Law, "nay the very [illegible] Law, and the great Law of the "Realm, [illegible] shall appear, the Justifiable of "[illegible]

That

THat from henceforth, as well Justices of Assize, as Justices of the Peace, in every County, upon information for the King, *before them made, without any Finding or Presentment by Twelvemen*, shall have full Power and Authority, by their discretion, to hear and determine all Offences, as Riots, unlawful Assemblies, &c. committed and done against any Act or Statute made, and not repeal'd, &c. (*a Case that very much resembles this of our own times.*)

"By pretext of this Law, *Empson* and *Dudley* did commit upon "the Subjects, unsufferable Pressure and Oppressions; and therefore this Statute *was justly, soon after the death of Hen. 7. re-*"*pealed*, at the next Parliament, after his decease, by the Statute of 1 Hen. 8. chap. 6.

"*A good Caveat to Parliaments, to leave all causes to be measured by the Golden and strait Metwand of the Law*, and not to the uncertain and crooked cord of discretion.

"It is almost incredible to foresee, when any *Maxime or Fundamental Law of this Realm is altered* (as elsewhere hath been observed) *what dangerous inconveniences do follow*, which most expresly appeareth by this most unjust and strange Act of the eleventh of Hen. 7. for hereby not only *Empson* and *Dudley* themselves, but such Justices of Peace (corrupt men) as they caused to be authorized, committed most grievous, and heavy oppressions and exactions, grinding the faces of the poor Subjects by penal Laws (be they never so obsolete, or unfit for the time) by information only, without any presentment, or tryal by Jury, being the antient Birth-right of the Subject, but to hear and determine the same by their discretions, inflicting such penalty as the Statute not repealed imposed. These, and other like oppressions and exactions by, or by the means of *Empson* and *Dudley*, and their Instruments, brought infinite Treasure to the King's Coffers, whereof the King himself at the end, with great

grief

"grievous exemption expected, as in another place we have
"observed.

"This Statute of the 11th of H. 4. we have recited, and
"thereby shall inform you more clearly of the end that the like
"should never hereafter be attempted in any Court of Parliament;
"and that others might avoid the fearful end of those two Time-
"Servers, *Hugh second Duke of Qui rerum ultrices inflexo, horum*
"*animos per horas cæsos.*

"See the Statute of 8 *Edw.* 4. chap. 2. a Statute of Liveries,
"an Information, and by no discretion of the Judges, to stand
"in Original, &c. This Act is deservedly repealed vide 12
"H. 2. chapter 13. Punishment by discretion, &c. vide 5th of
"H. 4. chap. 8. See the Commission of Sewers, discretion
"ought to be thus described. *Discretio Discretorum Regere quid*
"*sit justum*; From whence three things seem most remarkable.

First, The great Equity and Justice of the Great Charter, with the high value our Ancestors have most deservedly set upon it.

Secondly, The dreadful Maledictions, or Curse, they have denounced upon the Breakers of it, with those exemplary punishments they have not spared to inflict upon such notorious Offenders.

Thirdly, So hainous a thing was it esteemed of old, to endeavour an enervation, or subversion of those Ancient Rights and Privileges, that Acts of Parliament themselves (otherwise the most sacred with the people) have not been of force enough to secure or defend Judges from condign punishment, who in pursuance of them, have [illegible] with our Great Charter. Therefore it is, that that great Lawyer, the Lord Coke, doth more than once aggravate the example of *Empson* and *Dudley* with persons of the same rank into a just caution, as well to Parliaments as Judges, Justices of greater Magnitude, to declare making or executing any Act, that may in the least seem to infringe upon or contrive the total abrogation and confirmed Great Charter of the Liberties of England: For Parliaments are said to err when they cross, not the Precepts of their Acts penned, as Time-serving Flatterers, and that Kings themselves (though enriched by those Exactions) have with great Compunction and Repentance [illegible]

Therefore most [illegible] with which we conclude

clude this prefent Subject, what the King pleafed to obſerve in a Speech to the Parliament, about 168[illegible] (viz.) *The good old Rules of Law are our beſt ſecurity.*

The manner of the Court's behaviour towards the Priſoners, and Jury, with their many extravagant Expreſſions, muſt not altogether ſlip our obſervation.

(1ſt) Their language to the Jury could ſcarce allow preſidents; they maintained there, that a Packt of Felons was a Jury of honeſt men, as being fitter to be truſted themſelves, than to acquit others. In ſhort, No Jury, for many Ages, recorded for many inſtances of Diſpleaſure and Aſſront, *Becauſe they preferred not the Intereſt of the Court before the quiet of their own Conſciences, even to be eſteemed as perjured, though they had really been ſo, had they done what they did.*

(2d) Their treatment of the Priſoners was not more Unchriſtian than Inhumane. Hiſtory can ſcarce tell us of one *Heathen Roman*, that ever was ſo ignoble to his Captive: What! *to Accuſe*, and not *Hear them*; to *threaten to Bore their Tongues, Gag and ſtop their Mouths, Fetter their Legs, nearly for defending themſelves, and that by the Antient Fundamental Laws of* England? O Barbarous! Had they been *Turks* and *Infidels*, that carriage would have ill become a Chriſtian Court, *ſuch Allions proving much ſtronger diſſuaſives, than Arguments to convince them, how much the Chriſtian Religion relieves mens Priſons and Miſeries above their dark Bigotry.* It is truly lamentable, that ſuch occaſion ſhould be given, *for intelligence to foreign parts*, where *England* hath had the reputation of a Chriſtian Country, *by the tolerating of its Sober and Religious Inhabitants for their conſcientious Meetings to worſhip God.* But, above all, Diſcretion might have ſeaſonably enough expected this boariſh fierceneſs from the *Mayor of London*, when they conſider his eager proſecution of the *Kings Party* under *Cromwell's Government*, as thinking he could never give ſo great a Teſtimony of his Loyalty to that new Inſtrument, which makes the old Saying true, *That an Renegado is worſe than three Turks.*

Alderman *Bloodworth*, being conſcious to himſelf of his partial kindneſs to the *Popiſh Plot*, hopes to make an amends by his zealous proſecution of the poor *Diſſenters*, ſet at the ſame Seſſions he thought to have an Evidence (of no ſmall quality) againſt *Harriſon*, the Mercheant Fryar, ſent to *Bridewell* and whipt: he was earneſt to have the Jury ſine and impriſon, becauſe they brought in the Priſoners guilty, whereas Crime was proved againſt them, but peaceably worſhipping

Popish Religion, the Cause? Whence it only be easie to collect, that Popish Treachery, and Tyrannical Persuasions do mean Characteristicks.

But what others have only adventured to assume, as the Recorder of *London* has been so ingenuous as to publish plainly; or else, what mean those two great Expressions, *makes the Papists and terror both of City and Country?*

First, in asserting the Duty of Trust, *that a Lord be elected for his Parliament, That he would build a Protestant House, but such as conforms to the Church.* Which should it be granted, as we hope it is false, and a diffonourable Prophecie of the present Assembly; *that Papists may live to freedom* Martin *despite them by profest Protestants.*

But surely no *English* man can be so foolish, as to conceive that his right to *Liberty* and *Property* comes in with his Profession of the *Protestant Religion*; or that his *natural and humane Rights are dependant on certain religious apprehensions*; and consequently he must esteem it a cruelty in the abstract, that Persons should be denied the benefit of those Laws which relate to Civil concerns, who by their deportment in Civil affairs, have no wayes transgrest them, but meerly upon an opinion of Faith and matter of Conscience.

It is well known that *Liberty* and *Property*, *Trade* and Commerce were in the World long before the Points in difference betwixt *Protestants* and *Dissenters*, as the common Privileges of Mankind; and therefore not to be measured out by a conformity to this, or the other religious Persuasion, but purely as *English*.

Secondly, But we should rather choose to esteem this an Expression of heat in the Recorder, that that we could believe a *London Recorder* should say, an *English Parliament* should impose so much *Slavery* on the Present Age, and entail it upon their own Posterity (for *aught they know may be reckoned among the Dissenters of the next Age*) did he not encourage us to believe, it was both his *desire* and his *fulfilment*; from that deliberate *Elogy* he made on the *Spanish-Inquisition*, expressing himself much to this purpose, viz. "Till now I never understood the reason of the Policy and Prudence of the *Spaniards*, in suffering the *Inquisition* amongst them; for certainly it will not be well with us till something like unto the *Spanish Inquisition* be in *England*. The grosse malignity of which Saying is almost unexpressible! What does this but justifie that Hellish design of the Papists to have prevented the first Reformation? If this the good Doctrine, then *Haggestrant*, the

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Grand *Inquisitor*, was a more venerable Person than *Luther* the Reformer. It was an expression that had better become *Gajetan*, the *Popes Legate*, than *Howel*, *a Protestant Cities Recorder*. This is so far from helping to convert the *Spaniard* that it is the way to *harden him in his Idolatry*; when his abominable *cruelty* shall be esteemed Prudence, *and his most barbarous and exquisite torturing of Truth an excellent way to prevent Faction.*

If the Recorder has spake for no more than for himself, it is well; but certainly he little deserves to be thought a Protestant, *and a Lawyer, that puts both Reformation and Law into the Inquisition*: There being nothing more destructive of the Fundamental Laws and Liberties of *England*, and that noble design *of primitive Reformation, than the Arbitrary Power and Terrifying marks of the Spanish-Inquisition.* And *doubtless the* supream Governours *of the* Land, *are highly obliged in* Honour *and* Conscience (in discharge of their Trust to God and the *People*,) to take these things into their serious consideration, as what is expected from them, by those who earnestly wish theirs and the Kingdoms safety and Prosperity.

Postscript.

The Copy of Judge *Keeling's* Case, taken out of the Parliament Journal.

Die Mercurij, 11th Decembris, 1667.

THe House resumed the Hearing of the rest of the Report, touching the matter of Restraints upon Juries; and that upon the examination of divers witnesses, in several Clauses of restraint is put upon Juries, by the Lord Chief Justice Keeling; whereupon the Committee made their Resolutions, which are as followeth.

First, That the Proceedings of the Lord Chief Justice, in the Cases mentioned, are Innovations, in the Trial of men for their Lives and Liberties, and that he hath used an Arbitrary, and Illegal power,

Die Veneris, 12th December, 1667.

Resolved, &c.

That the Practice and Practices of Juries or Impannelling Juries by Sheriffs, &c.

punishment, the latter may not, who having a President before, did notwithstanding notoriously transgress.

To conclude, The Law supposes the King can't err, because it is willing to suppose, he always acts by Law (and *Voluntas Legis, est voluntas Regis.* Or the Kings Will is regulated by the Law) but it says no such thing of his Judges. And since they are oblig'd by Oath to disregard the Kings Letters (though under the Broad and Privy-Seal) if they any wise oppugn, or contradict the Law of the Land; and considering that every singular Action of an inferior Minister, has an ugly reference to the Supream Magistrate, where not rebuked; we can't but conclude, that both Judges are answerable for their irregularities, especially, where they had not a limitation of a Kings Letter, or command; and that the Supream Magistrate is oblig'd, as in Honour and Safety to himself, *Alfred*-like, to bring such to condign punishment, lest every Sessions produce the like Tragical Scenes of Usurpation over the Consciences of Juries, to the villifying and contemning of Justice, and great detriment, and prejudice of the good and honest men of this Famous and Free City.

FIAT JUSTICIA.

FINIS.